

Representative Earl D. Tanner proposes the following substitute bill:

CONTINUING CARE RETIREMENT COMMUNITY

AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Earl D. Tanner

Senate Sponsor: Deidre M. Henderson

LONG TITLE

General Description:

This bill enacts provisions related to continuing care providers.

Highlighted Provisions:

This bill:

- ▶ includes a continuing care provider within the jurisdiction of the Insurance Department;
- ▶ creates a continuing care advisory committee;
- ▶ provides operating requirements for a continuing care provider;
- ▶ requires a continuing care provider to register with the Insurance Department;
- ▶ provides form and content requirements for a continuing care contract;
- ▶ requires a continuing care provider to maintain an escrow account for certain resident fees;
- ▶ requires a continuing care provider to maintain reserve escrow accounts for certain financing and operations expenses;
- ▶ requires a continuing care provider to make certain disclosures;
- ▶ provides requirements for a successor to a continuing care provider's assets;
- ▶ grants rulemaking and enforcement authority to the Insurance Department;



- 26 ▶ provides that the Insurance Department may place a continuing care facility under
- 27 supervision, rehabilitation, or liquidation under certain circumstances;
- 28 ▶ imposes criminal and civil penalties; and
- 29 ▶ creates a private right of action.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 ENACTS:

- 36 **31A-44-101**, Utah Code Annotated 1953
- 37 **31A-44-102**, Utah Code Annotated 1953
- 38 **31A-44-103**, Utah Code Annotated 1953
- 39 **31A-44-104**, Utah Code Annotated 1953
- 40 **31A-44-201**, Utah Code Annotated 1953
- 41 **31A-44-202**, Utah Code Annotated 1953
- 42 **31A-44-203**, Utah Code Annotated 1953
- 43 **31A-44-204**, Utah Code Annotated 1953
- 44 **31A-44-205**, Utah Code Annotated 1953
- 45 **31A-44-206**, Utah Code Annotated 1953
- 46 **31A-44-301**, Utah Code Annotated 1953
- 47 **31A-44-302**, Utah Code Annotated 1953
- 48 **31A-44-303**, Utah Code Annotated 1953
- 49 **31A-44-304**, Utah Code Annotated 1953
- 50 **31A-44-305**, Utah Code Annotated 1953
- 51 **31A-44-306**, Utah Code Annotated 1953
- 52 **31A-44-307**, Utah Code Annotated 1953
- 53 **31A-44-308**, Utah Code Annotated 1953
- 54 **31A-44-309**, Utah Code Annotated 1953
- 55 **31A-44-310**, Utah Code Annotated 1953
- 56 **31A-44-311**, Utah Code Annotated 1953

- 57 **31A-44-312**, Utah Code Annotated 1953
- 58 **31A-44-313**, Utah Code Annotated 1953
- 59 **31A-44-314**, Utah Code Annotated 1953
- 60 **31A-44-401**, Utah Code Annotated 1953
- 61 **31A-44-402**, Utah Code Annotated 1953
- 62 **31A-44-403**, Utah Code Annotated 1953
- 63 **31A-44-404**, Utah Code Annotated 1953
- 64 **31A-44-405**, Utah Code Annotated 1953
- 65 **31A-44-406**, Utah Code Annotated 1953
- 66 **31A-44-407**, Utah Code Annotated 1953
- 67 **31A-44-408**, Utah Code Annotated 1953
- 68 **31A-44-501**, Utah Code Annotated 1953
- 69 **31A-44-502**, Utah Code Annotated 1953
- 70 **31A-44-503**, Utah Code Annotated 1953
- 71 **31A-44-504**, Utah Code Annotated 1953
- 72 **31A-44-505**, Utah Code Annotated 1953
- 73 **31A-44-506**, Utah Code Annotated 1953
- 74 **31A-44-507**, Utah Code Annotated 1953
- 75 **31A-44-601**, Utah Code Annotated 1953
- 76 **31A-44-602**, Utah Code Annotated 1953
- 77 **31A-44-603**, Utah Code Annotated 1953
- 78 **31A-44-604**, Utah Code Annotated 1953
- 79 **31A-44-605**, Utah Code Annotated 1953



81 *Be it enacted by the Legislature of the state of Utah:*

82 Section 1. Section **31A-44-101** is enacted to read:

83 **CHAPTER 44. CONTINUING CARE PROVIDER ACT**

84 **31A-44-101. Title.**

85 This chapter is known as the "Continuing Care Provider Act."

86 Section 2. Section **31A-44-102** is enacted to read:

87 **31A-44-102. Definitions.**

88 As used in this chapter:

89 (1) "Continuing care" means the furnishing to an individual, other than by an
90 individual related to the individual by blood, marriage, or adoption, of lodging together with
91 nursing services, medical services, or other related services pursuant to a contract requiring an
92 entrance fee.

93 (2) "Continuing care contract" means a contract under which a provider provides
94 continuing care to a resident.

95 (3) (a) "Entrance fee" means an initial or deferred transfer to a provider of a sum of
96 money or property made or promised to be made as full or partial consideration for acceptance
97 of a specified individual as a resident in a facility.

98 (b) "Entrance fee" does not include an amount less than the sum of the regular period
99 charges for three months of residency in a facility.

100 (c) "Entrance fee" includes a monthly fee, assessed at a rate that is greater than the
101 value of the provider's monthly services, that a resident agrees to pay in exchange for
102 acceptance into a facility or a promise of future monthly fees assessed at a rate that is less than
103 the value of the services rendered.

104 (d) "Entrance fee" does not include a deposit of less than \$1,000 made under a
105 reservation agreement.

106 (4) "Facility" means a place in which a person provides continuing care.

107 (5) "Living unit" means a room, apartment, cottage, or other area within a facility set
108 aside for the exclusive use or control of one or more identified individuals.

109 (6) "Provider" means:

110 (a) the owner of a facility;

111 (b) a person, other than a resident, that claims a possessory interest in a facility; or

112 (c) a person who enters into a continuing care contract with a resident or potential
113 resident.

114 (7) "Provider disclosure statement" means, for a given provider, the disclosure
115 statement described in Section [31A-44-301](#).

116 (8) "Reservation agreement" means an agreement that requires the payment of a
117 deposit to reserve a living unit for a prospective resident.

118 (9) "Resident" means an individual entitled to receive continuing care in a facility

119 pursuant to a continuing care contract.

120 Section 3. Section **31A-44-103** is enacted to read:

121 **31A-44-103. Advisory committee.**

122 (1) The commissioner may convene a continuing care advisory committee to advise the
123 department on issues related to the continuing care industry, continuing care facility residents,
124 and the department's duties under this chapter.

125 (2) The committee described in Subsection (1) shall consist of five members appointed
126 by the department as follows:

127 (a) a representative from an organization that advocates for the elderly;

128 (b) a representative of nursing homes;

129 (c) a representative from the continuing care industry;

130 (d) a representative from the insurance community; and

131 (e) a member of the general public who is a resident of a continuing care facility.

132 (3) (a) Except as required by Subsection (3)(b), the term of a member of the committee
133 shall be four years and expire on July 1.

134 (b) The commissioner shall, at the time of appointment or reappointment, adjust the
135 length of terms to ensure that the terms of members are staggered so that approximately half of
136 the committee is appointed every two years.

137 (4) A member of the committee shall serve until the member's successor is appointed
138 and qualified.

139 (5) When a vacancy occurs in the committee's membership, the department shall
140 appoint a replacement.

141 (6) The department may dismiss and replace members of the committee at the
142 department's discretion.

143 (7) The department may designate a chair of the committee.

144 (8) The committee shall meet when called by the department.

145 (9) A member may not receive compensation or benefits for the member's service, but
146 may receive per diem and travel expenses in accordance with:

147 (a) Section [63A-3-106](#);

148 (b) Section [63A-3-107](#); and

149 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and

150 [63A-3-107.](#)

151 (10) The department shall staff the committee.

152 Section 4. Section **31A-44-104** is enacted to read:

153 **31A-44-104. Scope of regulation.**

154 (1) The regulation of providers under this chapter does not limit or replace regulation
155 by any other governmental entity of continuing care facilities or providers.

156 (2) The department may not regulate, or in any manner inquire into, the quality of care
157 provided in a facility.

158 (3) A record that the department receives from a provider that is not required to be part
159 of a disclosure statement under this chapter is a protected record under Title 63G, Chapter 2,
160 Government Records Access and Management Act.

161 (4) The department shall determine the amount of any fee required under this chapter,
162 in accordance with Section [63J-1-504](#), and in an amount that covers the department's cost to
163 administer this chapter.

164 Section 5. Section **31A-44-201** is enacted to read:

165 **Part 2. Registration**

166 **31A-44-201. Registration required.**

167 (1) A person may not provide or offer to provide continuing care unless the person is
168 registered with the department.

169 (2) A registration expires on December 31 of a given year, unless a provider renews the
170 provider's registration under Section [31A-44-203](#).

171 Section 6. Section **31A-44-202** is enacted to read:

172 **31A-44-202. Registration.**

173 (1) To register under this part, a person shall:

174 (a) pay an original registration fee established by the department in accordance with
175 Section [63J-1-504](#); and

176 (b) submit a registration statement, in a form approved by the department, that contains
177 the information described in Subsection (2).

178 (2) A provider's registration statement shall include:

179 (a) the provider disclosure described in Section [31A-44-301](#);

180 (b) a copy of the continuing care contract that the provider will propose to a

181 prospective facility resident;

182 (c) evidence that the provider's facility is located or will be located in a zone that a
183 municipality or county has zoned exclusively for continuing care facilities; and

184 (d) information required by the department by rule made in accordance with Title 63G,
185 Chapter 3, Utah Administrative Rulemaking Act.

186 (3) The department may deny, suspend, or revoke the registration or renewal of a
187 provider if the department determines:

188 (a) the provider's application or registration statement is insufficient;

189 (b) the provider has not demonstrated that the provider is financially sound;

190 (c) the provider has not demonstrated that the competence, experience, and integrity of
191 the provider and the provider's board of directors, officers, and management make it in the
192 public interest to approve the registration; or

193 (d) the provider has not demonstrated that the provider is capable of complying with
194 this chapter.

195 (4) The department shall accept or deny a registration no later than 180 days after the
196 day on which the provider applies for registration.

197 Section 7. Section **31A-44-203** is enacted to read:

198 **31A-44-203. Renewal process.**

199 In order to renew a registration under this section, a provider shall:

200 (1) pay an annual fee established by the department in accordance with Section
201 63J-1-504;

202 (2) submit an updated provider disclosure statement that complies with Section
203 31A-44-301;

204 (3) submit a copy of the most recent version of the continuing care contract the
205 provider will propose to a prospective facility resident; and

206 (4) comply with rules made by the department under Subsection 31A-44-202(3).

207 Section 8. Section **31A-44-204** is enacted to read:

208 **31A-44-204. Actuarial review.**

209 (1) This section applies only to a provider that directly or indirectly offers a future
210 guarantee of continuing care that the department determines develops current actuarial
211 liabilities.

212 (2) A provider subject to this section shall file, with the department, an actuarial
213 review:

214 (a) upon being notified of the department's determination; and

215 (b) on a day designated by the department in the year five years after the day on which
216 the department last received an actuarial review from the provider.

217 (3) The department may require an actuarial review in addition to the actuarial reviews
218 required by Subsection (2) if the department determines that the provider shows an indication
219 of financial instability.

220 Section 9. Section **31A-44-205** is enacted to read:

221 **31A-44-205. Suspension or revocation of registration.**

222 The department may suspend or revoke a provider's registration if the provider:

223 (1) draws on an escrow account required by this chapter in an amount greater than
224 allowed by this chapter; or

225 (2) intentionally violates this chapter.

226 Section 10. Section **31A-44-206** is enacted to read:

227 **31A-44-206. Management by others.**

228 A provider may not contract for management of a facility unless the provider notifies
229 the department.

230 Section 11. Section **31A-44-301** is enacted to read:

231 **Part 3. Provider Disclosure**

232 **31A-44-301. Precontractual recording requirements.**

233 (1) A provider shall file with the department:

234 (a) a current disclosure statement that meets the requirements of this part; and

235 (b) a copy of an agreement that establishes an escrow account required under Part 4,

236 Operations, or a verified statement explaining that an escrow account is not required.

237 (2) A provider shall comply with Subsection (1) before the provider:

238 (a) contracts to provide continuing care to a resident in this state;

239 (b) extends the term of an existing continuing care contract with a resident in this state

240 that requires a person to pay an entrance fee, regardless of whether the extended continuing

241 care contract requires an entrance fee; or

242 (c) solicits or offers, or directs another person to solicit or offer, a continuing care

243 contract to a resident of the state.

244 (3) A provider solicits or offers a contract under Subsection (2)(c), if, after 12 months
245 before the day on which a party to a continuing care contract signs or accepts a continuing care
246 contract, the provider or a person acting on behalf of the provider gives information concerning
247 the facility or the availability of a continuing care contract for the facility:

248 (a) in a direct communication to an individual in the state; or

249 (b) in a paid advertisement published in or broadcast from the state, except for a paid
250 advertisement in a publication with more than two-thirds of the publication's circulation
251 outside of the state.

252 Section 12. Section **31A-44-302** is enacted to read:

253 **31A-44-302. Delivery of disclosure statement.**

254 (1) A provider shall deliver a disclosure statement to an individual before the earlier of
255 the date:

256 (a) the provider executes a continuing care contract with the individual; or

257 (b) the individual transfers an entrance fee or a nonrefundable deposit to the provider.

258 (2) The most recently filed disclosure statement:

259 (a) is current for the purpose of this chapter; and

260 (b) is the only disclosure statement that satisfies the requirements described in

261 Subsection (1).

262 Section 13. Section **31A-44-303** is enacted to read:

263 **31A-44-303. Cover page of disclosure statement.**

264 The cover page of a disclosure statement shall state:

265 (1) the disclosure statement's date in a prominent location and in type that is boldfaced,
266 capitalized, underlined, or otherwise set out from the surrounding written material so as to be
267 conspicuous;

268 (2) that the provider is required to deliver a disclosure statement to an individual before
269 the provider executes a continuing care contract with the individual or accepts payment of an
270 entrance fee or a nonrefundable deposit from the individual; and

271 (3) that the disclosure statement has not been approved by a government agency to
272 ensure the disclosure statement's accuracy.

273 Section 14. Section **31A-44-304** is enacted to read:

274 31A-44-304. Disclosure statement -- Contents -- Provider characteristics.
275 A provider disclosure statement shall contain:
276 (1) the name and business address of each provider officer, director, trustee, and
277 managing or general partner of the provider;
278 (2) the name and business address of each person who has at least a 10% interest in the
279 provider and a description of the person's interest in or occupation with the provider;
280 (3) a statement of whether the continuing care provider is a for-profit or not-for-profit
281 entity, and a statement of the provider's tax-exempt status, if any;
282 (4) (a) the location and a description of the proposed or existing physical property of
283 the facility; and
284 (b) if the physical property is proposed:
285 (i) the property's estimated completion date;
286 (ii) whether construction has begun; and
287 (iii) conditions under which the property's construction could be deferred;
288 (5) if the provider intends to contract with a person other than an employee of the
289 provider to manage the operations of the facility:
290 (a) a description of the person's experience in the operation or management of a
291 continuing care or similar facility;
292 (b) a description of any entity that controls or is controlled by the person that proposes
293 to provide goods, leases, or services to residents of the facility, of an aggregate value of \$500
294 or greater in a year;
295 (c) a description of any goods, leases, or services described in Subsection (5)(b), and a
296 statement of the probable or anticipated cost to the facility, provider, or residents for the goods,
297 leases, or services, or a statement that the provider is unable to estimate the cost; and
298 (d) a description of any matter in which the person:
299 (i) has been convicted of a felony;
300 (ii) is subject to a restrictive court order; or
301 (iii) has had a state or federal license revoked as a result of a matter related to a
302 continuing care facility or a related health care field; and
303 (6) (a) any religious, charitable, or nonprofit organization affiliated with the provider;
304 (b) the extent of the affiliation and the extent to which the organization is responsible

305 for contractual or financial obligations of the provider; and

306 (c) the organization's tax-exempt status, if any.

307 Section 15. Section **31A-44-305** is enacted to read:

308 **31A-44-305. Disclosure statement -- Contents -- Contract.**

309 A provider disclosure statement shall include a description of the following provisions
310 contained in the provider's continuing care contract:

311 (1) a description of the services provided under the provider's proposed continuing care
312 contract, including a description of:

313 (a) the extent to which the provider will offer or provide medical care to a resident; and

314 (b) the services the provider includes under the contract, and the services the provider
315 offers at an extra charge;

316 (2) the fees the provider requires a resident to pay, including any entrance fees or
317 periodic charges;

318 (3) a description of the conditions, in the provider's continuing care contract, under
319 which:

320 (a) a provider or a resident may cancel the continuing care contract;

321 (b) a provider will refund all or part of an entrance fee; or

322 (c) a provider may adjust a fee the provider charges a resident and any limitations on
323 those adjustments;

324 (4) any health or financial criteria that a resident is required to meet under the
325 continuing care contract for acceptance to the facility or for the resident to continue living in
326 the facility, including the effect of any change in the health or financial condition of an
327 individual between the date of the continuing care contract and the date on which the
328 individual initially occupies a living unit;

329 (5) the provider's policy for the spouse of a resident, regarding:

330 (a) the conditions under which the spouse is allowed to live in the resident's unit; and

331 (b) the financial or other consequences to the resident if the spouse does not meet the
332 requirements for admission;

333 (6) the provider's policy regarding changes in the number of people residing in a living
334 unit because of marriage or other relationships;

335 (7) the conditions under which a living unit occupied by a resident may be made

336 available by the provider to a different resident other than on the death of the previous resident;
337 and

338 (8) the number of continuing care contracts terminated, other than by the resident's
339 death, at the provider's facility in the state during the three most recent calendar years.

340 Section 16. Section **31A-44-306** is enacted to read:

341 **31A-44-306. Disclosure statement -- Contents -- Health care information.**

342 The provider disclosure statement shall include:

343 (1) a description of the facility as an independent living, assisted living, or nursing care
344 facility, or a combination of facility types;

345 (2) a general description of medical services provided at the facility in addition to
346 assisted living services and nursing care services;

347 (3) a statement as to whether the facility accepts Medicare and Medicaid
348 reimbursements; and

349 (4) notice of the online federal nursing care facility database and the online federal
350 nursing care facility database's Internet address.

351 Section 17. Section **31A-44-307** is enacted to read:

352 **31A-44-307. Disclosure statement -- Contents -- Financial information.**

353 The provider disclosure statement shall:

354 (1) describe any provisions the provider made or will make to provide reserve funding
355 or security to enable the provider to fully perform the provider's obligations under a continuing
356 care contract, including:

357 (a) the establishment of an escrow account, trust, or reserve fund, and the manner in
358 which the provider will invest the account, trust, or reserve funds; and

359 (b) the name and experience of an individual in the provider's direct employment who
360 will make the investment decisions;

361 (2) contain a provider financial statement, prepared in accordance with generally
362 accepted accounting principles, and audited by an independent certified public account, that
363 includes:

364 (a) a balance sheet as of the end of the most recent fiscal year;

365 (b) an income statement for each of the three most recent fiscal years; and

366 (c) a cash flow statement for each of the three most recent fiscal years;

367 (3) include a provider financial statement that contains estimated annual income
368 statements for the provider for at least the next five fiscal years, including the provider's:
369 (a) anticipated earnings on any cash reserves;
370 (b) estimate of net receipts from entrance fees, other than entrance fees included in the
371 statement of the anticipated source and application of funds required under Section
372 31A-44-305, minus estimated entrance fee refunds, including a description of the actuarial
373 basis and method of computation for the projection of entrance fee receipts;
374 (c) estimate of gifts or bequests to be relied on to meet operating expenses;
375 (d) projection of estimated income from fees and charges, excluding entrance fees,
376 that:
377 (i) states the individual rates the provider anticipates that the provider will charge; and
378 (ii) includes a description of the assumptions used for computing the estimated
379 occupancy rate of the facility and the effect on the income of the facility on a government
380 subsidy for health care services, if any, that is provided under the continuing care contract;
381 (e) projection of the facility's operating expenses, including:
382 (i) a description of the assumptions used in computing the facility's operating expenses;
383 and
384 (ii) a separate allowance for the replacement of equipment and furnishings and
385 anticipated major structural repairs or additions; and
386 (f) estimate of annual payments of principal and interest required by a mortgage loan or
387 other long-term financing arrangement relating to the facility.
388 Section 18. Section **31A-44-308** is enacted to read:
389 **31A-44-308. Anticipated source and application of funds.**
390 If a provider's facility is not in operation, the provider disclosure statement shall include
391 a statement of the provider's anticipated source and application of funds to be used in the
392 purchase or construction of the facility, including:
393 (1) an estimate of the cost of purchasing or constructing and of equipping the facility,
394 including financing expenses, legal expenses, land costs, occupancy development costs, and
395 any other costs that the provider expects to incur or to become obligated to pay before the
396 facility begins operating;
397 (2) a description of any mortgage loan or other long-term financing arrangement for the

398 facility, including the anticipated terms and costs of the financing;

399 (3) an estimate of the total entrance fees to be received from, or on behalf of, residents
400 before the facility begins operation; and

401 (4) an estimate of any funds the provider anticipates are necessary to cover the facility's
402 initial losses and to provide the reserve funds required by this chapter.

403 Section 19. Section **31A-44-309** is enacted to read:

404 **31A-44-309. Standard contract form.**

405 (1) A provider shall attach a copy of the provider's standard contract form to a
406 disclosure statement.

407 (2) The standard contract form shall specify the refund provisions of Sections
408 [31A-44-312](#) and [31A-44-313](#).

409 Section 20. Section **31A-44-310** is enacted to read:

410 **31A-44-310. Annual disclosure statement revision.**

411 (1) A provider shall file a revised disclosure statement with the department before 120
412 days after the day on which the provider's fiscal year ends.

413 (2) The revised disclosure statement shall revise, as of the end of the provider's fiscal
414 year, the information required by this part.

415 (3) The revised disclosure statement shall describe any material differences between:

416 (a) the estimated income statements filed under Section [31A-44-307](#) as a part of the
417 disclosure statement the provider filed after the start of the provider's most recently completed
418 fiscal year; and

419 (b) the actual result of operations during that fiscal year with the revised estimated
420 income statements filed as a part of the revised disclosure statement.

421 (4) A provider may revise the provider's disclosure statement and may file a revised
422 disclosure statement at any time if, in the provider's opinion, a revision is necessary to prevent
423 a disclosure statement from containing a material misstatement of fact or omitting a material
424 fact required by this part.

425 (5) The department:

426 (a) shall review the disclosure statement for completeness; and

427 (b) is not required to review the disclosure statement for accuracy.

428 Section 21. Section **31A-44-311** is enacted to read:

429 **31A-44-311. Advertisement in conflict with disclosures.**

430 A provider may not engage in any type of advertisement for a continuing care contract
431 or facility if the advertisement contains a statement or representation in conflict with the
432 disclosures required under this part.

433 Section 22. Section **31A-44-312** is enacted to read:

434 **31A-44-312. Rescission of contract -- Required language.**

435 (1) An individual who executes a continuing care contract with a provider may rescind
436 the contract at any time before the later of:

437 (a) midnight on the day seven days after the day on which the individual executes the
438 continuing care contract; or

439 (b) a time specified in the continuing care contract that is:

440 (i) after the day on which the continuing care contract is executed; or

441 (ii) after the day on which the individual receives a disclosure statement that meets the
442 requirements of this part.

443 (2) A provider may not require an individual who executes a continuing care contract
444 with the provider to move into a facility before the end of the rescission period described in
445 Subsection (1).

446 (3) If an individual rescinds a continuing care contract under this section, the provider
447 shall refund any money or property that the individual transferred to the provider, other than
448 periodic charges specified in the contract and applicable only to the period the individual
449 occupied a living unit, before 30 days after the day on which the individual rescinds the
450 contract.

451 (4) A continuing care contract shall include the following statement, or a substantially
452 equivalent statement, in type that is boldfaced, capitalized, underlined, or otherwise set out
453 from the surrounding written material so as to be conspicuous:

454 "You may cancel this contract at any time before midnight on the day seven days after
455 the day on which you sign the contract, or before a later day if specified in the contract that is
456 after the later of the day on which you sign the contract or you receive the facility's disclosure
457 statement. If you elect to cancel the contract, you are required to cancel the contract in writing,
458 and you are entitled to receive a refund of all assets transferred other than periodic charges
459 applicable to the time you occupied your living unit."

460 (5) In addition to Subsection (4), a continuing care contract shall include the following
461 statement in type that is boldfaced, capitalized, underlined, or otherwise set out from the
462 surrounding written material so as to be conspicuous:

463 "This document, if executed, constitutes a legal and binding contract between you and
464 _____ (Legal name of the continuing care provider). You may wish to consult a legal or
465 financial advisor before signing, although it is not required that you do so to make this contract
466 binding."

467 Section 23. Section **31A-44-313** is enacted to read:

468 **31A-44-313. Cancellation of contract -- Death or incapacity before occupancy.**

469 (1) A continuing care contract to provide continuing care in a living unit in a facility is
470 cancelled if the resident:

471 (a) dies before occupying a living unit in the facility; or

472 (b) is precluded under the terms of the contract from occupying a living unit in the
473 facility because of illness, injury, or incapacity.

474 (2) If a continuing care contract is cancelled under this section, the resident or the
475 resident's legal representative is entitled to a refund of all money or property transferred to the
476 provider, minus:

477 (a) any nonstandard costs specifically incurred by the provider or facility at the request
478 of the resident that are described in the contract or in an addendum to the contract signed by the
479 resident; and

480 (b) a reasonable service charge, if set out in the contract, that may not exceed the
481 greater of:

482 (i) \$1,000; or

483 (ii) 2% of the entrance fee.

484 Section 24. Section **31A-44-314** is enacted to read:

485 **31A-44-314. Disclosure statement fees.**

486 A provider that files a disclosure statement under this chapter shall pay to the
487 department a fee established by the department in accordance with Section [63J-1-504](#).

488 Section 25. Section **31A-44-401** is enacted to read:

489 **Part 4. Operations**

490 **31A-44-401. Continuing care contract requirements -- No waiver.**

491 (1) A continuing care contract shall:

492 (a) provide that the provider shall refund the portion of a resident's entrance fee that the
493 provider has agreed to refund, if any, no later than the earlier of:

494 (i) 30 days after the day on which the resident's living unit is occupied by a new
495 resident; or

496 (ii) one year after the day on which the resident ceases to occupy the resident's living
497 unit, unless the provider proves that the provider has made and is making a good faith effort to
498 find another resident for the living unit at the lowest entrance fee that is acceptable to the
499 resident;

500 (b) provide that the resident may terminate the continuing care contract upon giving
501 notice of termination:

502 (i) with or without cause; and

503 (ii) clearly stating what portion of the entrance fee the provider will refund and the date
504 by which the provider will make the refund; and

505 (c) provide that a continuing care contract is terminated by the resident's death and
506 clearly state:

507 (i) what portion of the entrance fee the provider will refund in the event of the
508 resident's death;

509 (ii) the date before which the provider will make the refund; and

510 (iii) to whom the provider will make the refund.

511 (2) A continuing care contract may permit involuntary dismissal of a resident from a
512 continuing care facility upon a reasonable determination by the provider that the resident's
513 health and well-being require termination of the continuing care contract.

514 (3) If a resident is dismissed under Subsection (2) and is in a condition of financial
515 hardship, as defined by the department by rule made in accordance with Title 63G, Chapter 3,
516 Utah Administrative Rulemaking Act, the provider shall refund the resident's entrance fee:

517 (a) in an amount provided in the continuing care contract; and

518 (b) before the earlier of:

519 (i) a time provided in the continuing care contract; and

520 (ii) 60 days after the day on which the provider dismisses the resident from the facility.

521 (4) A resident may not waive a provision of this chapter by agreement.

522 Section 26. Section **31A-44-402** is enacted to read:

523 **31A-44-402. Escrow account -- Entrance fees.**

524 (1) (a) A provider may not accept payment, from an individual, of a deposit made
525 under a reservation agreement, or of an entrance fee or a portion of an entrance fee, before the
526 provider establishes an entrance fee escrow account with a federally insured depository
527 institution, as escrow agent, that is located in the state.

528 (b) No later than 72 hours after the provider receives a deposit, an entrance fee, or a
529 portion of an entrance fee, the provider shall deposit the deposit, entrance fee, or portion of an
530 entrance fee with the escrow agent described in Subsection (1)(a).

531 (c) If the provider or a prospective resident of the provider's facility submits a written
532 request to the escrow agent, the escrow agent may:

533 (i) return the prospective resident's deposit; or

534 (ii) deposit the entrance fee into the entrance fee escrow account.

535 (d) Unless the escrow agent receives a written request from a provider or a resident to
536 return an entrance fee, the escrow agent shall release the entrance fee to the provider or place
537 the entrance fee in a loan reserve fund escrow account under Section [31A-44-403](#) or an
538 operations reserve fund escrow under Section [31A-44-404](#).

539 (2) Except as provided in Subsection (3), an escrow agent shall release an entrance fee
540 that applies to a living unit to the provider if:

541 (a) a minimum of 50% of the number of living units in the facility have been reserved
542 for residents, as evidenced by:

543 (i) executed continuing care contracts with the residents that the residents have not
544 cancelled; and

545 (ii) the receipt by the escrow agent, from each resident with a living unit reserved, of at
546 least 10% of the entrance fee deposit required by the resident's continuing care contract;

547 (b) the sum of the aggregate entrance fees received or receivable by the provider under
548 binding continuing care contracts, the anticipated proceeds of any first mortgage loan or other
549 long-term financing commitment, and funds from other sources in the actual possession of the
550 provider are greater than or equal to the sum of:

551 (i) 90% of the aggregate cost of constructing, or purchasing, equipping, and furnishing,
552 the facility;

553 (ii) 90% of the funds that the provider estimates, in the statement of the anticipated
554 source and application of funds included in the disclosure statement, are necessary to cover the
555 initial losses of the facility;

556 (iii) 90% of the amount of any loan reserve fund escrow account the provider is
557 required to maintain under Section 31A-44-403; and

558 (iv) 90% of the amount of any operations reserve fund escrow account the provider is
559 required to maintain under Section 31A-44-404; and

560 (c) a commitment has been received by the provider for any permanent mortgage loan
561 or other long-term financing described in the statement of the anticipated source and
562 application of funds included in the current disclosure statement and the provider has satisfied
563 any conditions of the commitment except completion of the construction or closing on the
564 purchase of the facility, and:

565 (i) if the provider has not substantially completed construction of the facility:

566 (A) the provider has obtained any necessary government permit or approval;

567 (B) the provider and the general contractor responsible for construction of the facility
568 have entered into a maximum price contract;

569 (C) a recognized surety authorized to do business in the state has executed a bond in
570 favor of the provider that covers the performance of the construction contract by the general
571 contractor and the payment of all obligations under the contract;

572 (D) the provider has entered into a loan agreement for an interim construction loan in
573 an amount that, when combined with the amount of entrance fees in escrow plus the amount of
574 funds from other sources in the actual possession of the provider, equals or exceeds the
575 estimated cost of constructing, equipping, and furnishing the facility;

576 (E) the lender has disbursed at least 10% of the amount of the construction loan for
577 physical construction of the facility or completed site preparation work; and

578 (F) the provider has placed orders at firm prices for at least 50% of the value of items
579 necessary for equipping and furnishing the facility in accordance with the description in the
580 disclosure statement, including any installation charges; or

581 (ii) if construction or purchase of the facility has been substantially completed:

582 (A) a local government entity that has the authority to issue an occupancy permit has
583 issued an occupancy permit covering the living unit; and

584 (B) if the entrance fee applies to a living unit that has been previously occupied, the
585 living unit is available for occupancy by the new resident.

586 (3) The escrow agent may not release, before the date on which the loan reserve fund
587 escrow account required under Section 34A-44-403 and the operations reserve fund escrow
588 account required under Section 31A-44-404 are first established, an aggregate amount of
589 entrance fees to the provider that is greater than the aggregate amount of entrance fees received
590 or receivable by the provider under binding continuing care contracts minus the amount of
591 entrance fees received or receivable by the provider that the provider is required to maintain
592 initially in the loan reserve fund escrow and operations reserve fund escrow accounts.

593 (4) (a) The department may create, by rule made in accordance with Title 63G, Chapter
594 3, Utah Administrative Rulemaking Act, standards for when an escrow agent may release an
595 entrance fee to a provider for a facility that is built in phases.

596 (b) A provider that intends to build a facility in phases shall, before the provider begins
597 construction of the provider's facility, request that the department adapt the requirements
598 described in this section to a facility built in phases.

599 (5) (a) After an escrow agent releases an entrance fee to a provider for a specific
600 facility, the department shall authorize the escrow agent to continue to release entrance fees to
601 the provider for the facility, without requiring the provider to submit additional proof that the
602 provider complies with this section, if:

603 (i) the provider provides the department a monthly report on marketing activities for
604 the facility's living units; and

605 (ii) the provider immediately informs the department of a problem, issue, or
606 irregularity that the provider encounters while marketing the facility.

607 (b) If the provider fails to meet the requirements of Subsection (5)(a), the department
608 may require the provider to provide ongoing proof that the provider satisfies the requirements
609 of this section.

610 (6) A provider may not pledge an entrance fee held in escrow, or a portion of an
611 entrance fee held in escrow, as collateral to secure a loan.

612 (7) (a) Except as provided in Subsection (7)(b), if an entrance fee is neither released to
613 the provider nor returned to the resident two years after the day on which an escrow agent
614 receives an entrance fee related to a resident, the escrow agent shall return the entrance fee to

615 the resident.

616 (b) The provider may provide for a release date that is different than required by
617 Subsection (7)(a) if the provider clearly states the release date in the disclosure statement.

618 (8) This chapter does not require the escrow of any nonrefundable portion of a deposit
619 or entrance fee that:

620 (a) does not exceed an amount equal to 2% of the entrance fee; and

621 (b) is clearly designated as nonrefundable in the continuing care contract or reservation
622 agreement.

623 (9) Unless otherwise provided in a continuing care contract, interest that accrues on
624 funds held in an entrance fee escrow account is the property of the provider.

625 (10) The department shall adopt rules, made in accordance with Title 63G, Chapter 3,
626 Utah Administrative Rulemaking Act, to implement this section.

627 Section 27. Section **31A-44-403** is enacted to read:

628 **31A-44-403. Loan reserve fund escrow account.**

629 (1) Beginning the day on which the first resident occupies a continuing care facility, a
630 provider shall establish and maintain a loan reserve fund escrow account in an account with a
631 federally insured depository institution in Utah.

632 (2) (a) A provider shall maintain, on any given day, in the account described in
633 Subsection (1), an account balance in an amount equal to, for each mortgage or other long-term
634 financing arrangement for the facility, the sum of the principal and interest payments due in 12
635 months after the given day.

636 (b) A provider may comply with the requirement described in Subsection (2)(a) if the
637 provider has other reserve funds for the purpose of meeting a loan obligation that total an
638 amount that is greater than or equal to the amount required by Subsection (2)(a).

639 (3) The provider may invest the funds contained in the loan reserve fund escrow
640 account described in Subsection (1), and other reserve funds the provider holds for the purpose
641 of meeting a loan obligation, with interest payable to the provider, in accordance with
642 requirements established by the department by rule made in accordance with Title 63G,
643 Chapter 3, Utah Administrative Rulemaking Act.

644 (4) The escrow agent may, for the account described in Subsection (1), upon a
645 provider's written request, release an amount less than or equal to one-twelfth of the amount

646 described in Subsection (2).

647 (5) The escrow agent shall give written notice to the department 11 days before the day
648 on which the escrow agent releases an amount under Subsection (4).

649 (6) The escrow agent may not release funds from the loan reserve fund escrow account
650 under this section more than once during a calendar year.

651 (7) (a) A provider may apply to the department for the withdrawal of all or part of the
652 loan reserve fund escrow account funds.

653 (b) The department may release the loan reserve fund escrow account funds in
654 accordance with requirements established by the department by rule made in accordance with
655 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

656 (8) A provider shall repay to the loan reserve fund escrow account described in
657 Subsection (1) any amount released to the provider under this section no later than 18 months
658 after the day on which the amount is released to the provider.

659 (9) The department may place the provider or facility under supervision under Part 5,
660 Supervision, Rehabilitation, and Liquidation, or take any other appropriate action as provided
661 by law if the provider does not repay the loan reserve fund escrow account within the required
662 period.

663 Section 28. Section **31A-44-404** is enacted to read:

664 **31A-44-404. Operations reserve fund escrow account.**

665 (1) Beginning the day on which the first resident occupies a continuing care facility, a
666 provider shall establish and maintain an operations reserve fund escrow account with a
667 federally insured depository institution in Utah.

668 (2) A provider shall maintain, on any given day, in the operations reserve fund escrow
669 account described in Subsection (1), an account balance in an amount equal to 20% of the
670 provider's projected operating expenses the provider will incur for a facility during the 12
671 months after the given day. The requirements of this section may be met in whole or in part by
672 other reserve funds held for the purpose of meeting operating expenses if the total amount
673 equals or exceeds the amount required by this Subsection (2).

674 (3) The funds in the operations reserve fund escrow account and other reserve funds
675 held for the purpose of meeting loan obligations under this section may be invested in
676 accordance with rules promulgated by the department, with earnings payable to the provider.

677 (4) The escrow agent may, for the operations reserve fund escrow account described in
678 Subsection (1), upon written request of the provider, release an amount less than or equal to
679 20% of the amount described in Subsection (2).

680 (5) The escrow agent must give written notice to the department no later than 11 days
681 before the day on which the escrow agent releases the funds as described in Subsection (4).

682 (6) The escrow agent may not release funds from the operations reserve fund escrow
683 account under this section more than once during a calendar year.

684 (7) A provider shall repay the operations reserve fund escrow account described in
685 Subsection (1) any amount released to the provider under Subsection (4) no later than 18
686 months after the day on which the amount is released to the provider.

687 (8) The department may place the provider or facility under supervision under Part 5,
688 Supervision, Rehabilitation, and Liquidation, or take other legal action if the provider does not
689 repay the operations reserve fund escrow account within the required period.

690 Section 29. Section **31A-44-405** is enacted to read:

691 **31A-44-405. Actuarial reserve -- Department may require.**

692 (1) The department may require a provider that the department determines has actuarial
693 liability under Section [31A-44-204](#) to create an additional reserve fund to offset the actuarial
694 liability.

695 (2) The department may require the additional reserve fund described in Subsection (1)
696 by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

697 Section 30. Section **31A-44-406** is enacted to read:

698 **31A-44-406. Resident advisory committee.**

699 (1) A provider shall maintain, for a facility, a resident advisory committee that meets
700 the requirements of this section.

701 (2) A resident advisory committee shall:

702 (a) consist of no fewer than the lesser of five residents or all residents;

703 (b) meet no less than once per month; and

704 (c) discuss resident concerns and communications relevant to the provider or the
705 facility.

706 (3) A provider shall:

707 (a) meet with the resident advisory committee no fewer than three times per year; and

708 (b) distribute a provider disclosure statement to the resident advisory committee each
709 time the provider is required to renew the provider disclosure statement under Section
710 31A-44-301.

711 Section 31. Section **31A-44-407** is enacted to read:

712 **31A-44-407. Nondisturbance of residents.**

713 (1) A person may not directly or indirectly disturb the rights of a resident or third party
714 beneficiary under a continuing care contract and this chapter if the resident has substantially
715 performed the resident's obligations under the continuing care contract.

716 (2) If which person a resident owes performance to under the continuing care contract
717 is contested, and a court has not issued a temporary or permanent order resolving the contest:

718 (a) the department may appoint a temporary receiver to receive the performance of the
719 resident; and

720 (b) a court may appoint a receiver upon petition by the department.

721 Section 32. Section **31A-44-408** is enacted to read:

722 **31A-44-408. Continuing care facilities not exempt from property tax.**

723 Notwithstanding any tax-exempt status of a provider or facility, a provider or facility is
724 liable for property tax due under Title 59, Chapter 2, Property Tax Act.

725 Section 33. Section **31A-44-501** is enacted to read:

726 **Part 5. Supervision, Rehabilitation, and Liquidation**

727 **31A-44-501. Supervision.**

728 (1) The department may place a provider or facility under supervision if:

729 (a) the provider draws on the provider's entrance fee escrow account in an amount
730 greater than permitted by Section 31A-44-402;

731 (b) the provider draws on the provider's loan reserve fund escrow account or operations
732 reserve fund escrow account in an amount greater than permitted or more frequently than
733 permitted by Sections 31A-44-403 and 31A-44-404;

734 (c) the department determines that the provider is financially unsound or is unable to
735 meet the income or available cash projections included in the provider's disclosure statement,
736 and that the ability of the provider to fully perform the provider's obligations under continuing
737 care contracts is endangered; or

738 (d) the provider is bankrupt, insolvent, or has filed for protection from creditors under

739 a federal or state reorganization, bankruptcy, or insolvency law.

740 (2) For a provider or facility that the department places under supervision, the
741 department:

742 (a) shall appoint a supervisor; and

743 (b) may order the facility, other than an order described in Section [31A-44-503](#) or
744 [31A-44-504](#), to correct any condition described in Subsection 1(a) through (d) that is the basis
745 for placing the provider or facility under supervision.

746 (3) The department may provide that a provider may not, during the supervision period
747 and without the prior approval of the department or the supervisor:

748 (a) dispose of, convey, or encumber the provider's assets;

749 (b) withdraw from the provider's bank account;

750 (c) lend the provider's funds;

751 (d) invest the provider's funds;

752 (e) transfer the provider's property;

753 (f) incur a debt, obligation, or liability;

754 (g) merge or consolidate with another facility; or

755 (h) enter into a new continuing care contract.

756 (4) The department shall terminate the supervision and restore to a provider the
757 authority to manage a facility's affairs if the department determines that the facility is capable
758 of meeting its financial obligations.

759 (5) The facility or provider shall pay the costs of a supervisor.

760 Section 34. Section **31A-44-502** is enacted to read:

761 **31A-44-502. Application for court order for rehabilitation or liquidation.**

762 (1) Regardless of whether the department places a facility or provider under
763 supervision under Section [31A-44-501](#), the department may request that the attorney general
764 petition a district court in the state, or a federal bankruptcy court that has exercised jurisdiction
765 over a provider's facility, for an order that appoints a trustee to rehabilitate or liquidate the
766 facility if:

767 (a) the provider draws from the provider's loan reserve fund escrow account or the
768 operations reserve fund escrow account in an amount greater than permitted by Sections
769 [31A-44-403](#) and [31A-44-404](#);

770 (b) the provider does not repay the loan reserve fund escrow account or the operations
771 reserve fund escrow account as required by Sections 31A-44-403 and 31A-44-404;

772 (c) the department determines that:

773 (i) the provider is financially unsound or is unable to meet the income or available cash
774 projections described in the provider's disclosure statement; and

775 (ii) the provider's ability to fully perform the provider's obligations under a continuing
776 care contract is endangered; or

777 (d) the provider is bankrupt, insolvent, or has filed for protection from creditors under
778 a federal or state reorganization, bankruptcy, or insolvency law.

779 (2) A court that evaluates a petition filed under Subsection (1) regarding a provider:

780 (a) shall evaluate the best interests of a person that has contracted with the provider;

781 and

782 (b) may require the proceeds of a lien imposed under Section 31A-44-601 to be used to
783 pay an entrance fee to another facility on behalf of a resident of the provider's facility.

784 Section 35. Section 31A-44-503 is enacted to read:

785 **31A-44-503. Order to rehabilitate.**

786 A court order to rehabilitate a facility under Section 31A-44-502 shall direct a trustee
787 to:

788 (1) take possession of the provider's property in order to conduct the provider's
789 business, including employing any manager or agent that the trustee considers necessary; and

790 (2) take action as directed by the court to eliminate the causes and conditions that made
791 rehabilitation necessary, which action may include:

792 (a) selling the facility through bankruptcy or receivership proceedings; and

793 (b) requiring a purchaser of the facility to honor any continuing care contract for the
794 facility.

795 Section 36. Section 31A-44-504 is enacted to read:

796 **31A-44-504. Order to liquidate.**

797 (1) If the trustee determines that further efforts to rehabilitate a provider's facility are
798 impractical or useless, the trustee may petition a court for liquidation of the facility.

799 (2) A court that issues an order to liquidate a facility under Subsection (1) shall appoint
800 a trustee to collect and liquidate all of the provider's assets located in this state.

801 (3) An individual may not enter into a continuing care contract at a facility after a court
802 enters an order to liquidate the facility.

803 Section 37. Section **31A-44-505** is enacted to read:

804 **31A-44-505. Bond.**

805 A court may refuse to make or vacate an order to rehabilitate a provider's facility under
806 this part if the provider posts a bond that is:

807 (1) in an amount that the court determines is equal to the reserve funding the provider
808 needs to fulfill the provider's obligations under all of the continuing care contracts for the
809 facility;

810 (2) issued by a recognized surety authorized to do business in the state; and

811 (3) executed in favor of the state on behalf of any individual entitled to an entrance fee
812 refund or other damages from the provider.

813 Section 38. Section **31A-44-506** is enacted to read:

814 **31A-44-506. Termination of rehabilitation.**

815 (1) A court may terminate a rehabilitation of a provider's facility and order the return of
816 the facility and the facility's assets to the provider if the court determines:

817 (a) the objectives of the order to rehabilitate the facility have been accomplished; and

818 (b) the facility may be returned to the provider without further jeopardy to the facility's
819 residents, creditors, or owners, or the public.

820 (2) A court may enter an order under this section after the court enters:

821 (a) a full report and accounting of the conduct of the facility's affairs during the
822 rehabilitation; and

823 (b) a report on the facility's financial condition.

824 Section 39. Section **31A-44-507** is enacted to read:

825 **31A-44-507. Payment of trustee.**

826 A trustee's reasonable costs, expenses, and fees are payable from a provider's or
827 facility's assets.

828 Section 40. Section **31A-44-601** is enacted to read:

829 **Part 6. Enforcement**

830 **31A-44-601. Lien held by the commissioner in favor of a resident or a group of**
831 **residents.**

832 (1) To secure the obligations of the provider to a resident or a group of residents under
833 a continuing care contract, the commissioner holds a lien in favor of the resident or group of
834 residents that attaches on the day a resident first occupies a facility or receives services under a
835 continuing care contract.

836 (2) A lien described in Subsection (1) covers the real and personal property of the
837 provider.

838 (3) The provider shall prepare, for each county where the provider has an interest in
839 real or personal property, a written notice, sworn to by an officer of the provider, that contains:

840 (a) the name of the provider;

841 (b) a legal description of the provider's real or personal property; and

842 (c) a statement that the real or personal property is subject to this chapter and to the
843 lien imposed by this section.

844 (4) The provider shall record the notice described in Subsection (3) in the real property
845 records of each county where the provider has real property on or before the date the provider
846 first executes a continuing care contract for the facility.

847 (5) The commissioner may, after providing notice to any resident of a facility subject to
848 a lien described in Subsection (1), and after providing an opportunity for a hearing, subordinate
849 the lien if the provider establishes, by a preponderance of the evidence, that:

850 (a) subordinating the lien is necessary to obtain secondary financing or refinancing of
851 real or personal property subject to the lien;

852 (b) the provider is financially sound; and

853 (c) subordinating the lien does not adversely affect the residents of a facility subject to
854 the lien.

855 (6) Except as provided in Subsection (7), the lien described in Subsection (1) is
856 subordinate to a lien on the property of the provider.

857 (7) The amount of a lien on the provider's property that is superior to a lien described
858 in Subsection (1) is limited to the portion of the funds secured by the lien that the provider uses
859 to:

860 (a) construct, acquire, replace, or improve a facility;

861 (b) refinance the portion of a loan used to construct, acquire, replace, or improve a
862 facility; or

- 863 (c) pay, for a loan related to the facility, a reasonable loan fee or loan expense.
864 (8) If a lien on the property of the provider is superior to a lien described in Subsection
865 (1), a provider may only use an entrance fee to:
866 (a) reduce a debt secured by a superior lien;
867 (b) construct, acquire, replace, or improve a facility;
868 (c) establish the escrow funds required by this chapter;
869 (d) fund reserves for the provider's actuarial debt under continuing care contracts for a
870 facility;
871 (e) refund an entrance fee of a resident of a facility;
872 (f) pay a facility resident's debt to the provider for a recurring fee due under the
873 resident's continuing care contract; or
874 (g) pay an amount for a purpose approved by the commissioner.
875 (9) The commissioner may foreclose a lien described in Subsection (1) if property
876 subject to the lien is liquidated or the provider is insolvent or bankrupt.
877 (10) The commissioner shall use the proceeds from a lien foreclosed under Subsection
878 (8) to satisfy the provider's obligations under any continuing care contract in effect on the day
879 the commissioner forecloses the lien.
- 880 Section 41. Section **31A-44-602** is enacted to read:
881 **31A-44-602. Enforcement by department -- Rulemaking.**
882 (1) Subject to the requirements of Title 63G, Chapter 4, Administrative Procedures
883 Act, the department may:
884 (a) receive and act on a complaint about a provider or a facility;
885 (b) take action designed to obtain voluntary compliance by the provider with this
886 chapter;
887 (c) commence administrative or judicial proceedings on the commission's own in order
888 to enforce compliance by a provider with this chapter; or
889 (d) take action against a provider who fails to:
890 (i) respond to the department, in writing, before 30 business days after the day on
891 which the provider receives notice from the department of a complaint filed with the
892 department; or
893 (ii) submit information requested by the department.

- 894 (2) The department may:
895 (a) counsel an individual on the individual's rights or duties under this chapter;
896 (b) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
897 Rulemaking Act, to:
898 (i) restrict or prohibit practices by the provider that are misleading, unfair, or abusive;
899 (ii) promote or assure fair and full disclosure of the terms and conditions of continuing
900 care contracts, agreements, and communications between a resident and a provider;
901 (iii) promote or assure the ability of the public to compare continuing care contracts,
902 providers, and facilities; and
903 (iv) clearly disclose any financial risks related to a provider's facility to the facility's
904 residents;
905 (c) employ hearing examiners, clerks, and other employees and agents as necessary to
906 perform the department's duties under this chapter; and
907 (d) appoint a receiver for a provider.

908 Section 42. Section **31A-44-603** is enacted to read:

909 **31A-44-603. Examinations.**

- 910 (1) The department may conduct periodic on-site examinations of a provider.
911 (2) In conducting an examination, the department or the department's staff:
912 (a) shall have full and free access to all the provider's records; and
913 (b) may summon and qualify as a witness, under oath, and examine, any director,
914 officer, member, agent, or employee of the provider, and any other person, concerning the
915 condition and affairs of the provider or a facility.
916 (3) The provider shall pay the reasonable costs of an examination under this section.
917 (4) The department may conduct an on-site examination in conjunction with an
918 examination performed by a representative of an agency of another state.
919 (5) (a) The department, in lieu of an on-site examination, may accept the examination
920 report of an agency of another state that has regulatory oversight of the provider, or a report
921 prepared by an independent accounting firm.
922 (b) A report accepted under Subsection (5)(a) is considered for all purposes an official
923 report of the department.
924 (6) Upon reasonable cause, the department may conduct an on-site examination of an

925 unlicensed person to determine whether a violation of this chapter has occurred.

926 Section 43. Section **31A-44-604** is enacted to read:

927 **31A-44-604. Criminal and civil penalties.**

928 (1) A person who knowingly violates this chapter or files materially false information

929 with a registration application or renewal under this chapter is:

930 (a) guilty of a class B misdemeanor; and

931 (b) subject to revocation of the person's registration under this chapter.

932 (2) Subject to Title 63G, Chapter 4, Administrative Procedures Act, if the department

933 determines that a person is engaging in the business of being a continuing care provider in

934 violation of this chapter, the department may:

935 (a) suspend, revoke, or refuse to renew the person's registration under this chapter;

936 (b) issue a cease and desist order from committing any further violation;

937 (c) prohibit the person from continuing to engage in the business of being a continuing

938 care provider;

939 (d) impose an administrative fine not greater than \$1,000 per violation, except that the

940 aggregate total of fines imposed under this chapter against a person in a calendar year may not

941 exceed \$30,000 for that calendar year; or

942 (e) take any combination of actions listed under this Subsection (2).

943 (3) If the department revokes a registration, the department is not required to refund

944 any portion of the provider's filing or renewal fee for the remainder of the period for which the

945 fee is paid.

946 Section 44. Section **31A-44-605** is enacted to read:

947 **31A-44-605. Civil liability.**

948 (1) A provider who enters into a continuing care contract with an individual without

949 complying with the disclosure statement requirement described in this chapter, or who makes a

950 continuing care contract with an individual who relies on a disclosure statement that omits a

951 material fact, is liable to the individual for:

952 (a) actual damages;

953 (b) repayment of all fees the individual paid to the provider, minus the reasonable

954 value of care and lodging provided to the individual before the violation, misstatement, or

955 omission was discovered or reasonably should have been discovered;

956 (c) interest at the legal rate for judgments;

957 (d) court costs; and

958 (e) reasonable attorney fees.

959 (2) A provider is liable under this section regardless of whether the provider had actual
960 knowledge of the misstatement or omission.

961 (3) An individual may not file or maintain an action under this section if:

962 (a) the individual, before filing the action, receives a written offer from the provider for
963 refund of all amounts paid to the provider or the provider's facility plus reasonable interest
964 from the date of payment, minus the reasonable value of care and lodging provided before the
965 receipt of the offer;

966 (b) the offer includes a description of the provisions of this section; and

967 (c) the recipient of the offer fails to accept the offer within 30 days after the date the
968 offer is received.

969 (4) An individual shall bring an action under this section before the day three years
970 after:

971 (a) the day on which the individual enters into the continuing care contract; or

972 (b) the individual discovers, or reasonably should have discovered, the provider's
973 violation, misstatement, or omission.

974 (5) A person does not have a cause of action under this chapter except as expressly
975 provided by this chapter.

976 (6) This chapter does not limit the liability that exists under any other statute or
977 common law.

978 (7) The provisions of this chapter are not exclusive and the remedies provided by this
979 chapter are in addition to any other remedies provided by any other law.